IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 193 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

BIPIN VADILAL

Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 26/04/99

ORAL JUDGEMENT

#. The following question of law has been referred by the Income Tax Appellate Tribunal, Ahmedabad for the opinion of this Court arising out of its appellate order in Income Tax Application No. 1208/Ahd/80 relating to assessment years 1967-68 and 1968-69:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the ITO was not entitled to reopen the assessment under Section 17(a) of the Income Tax Act, 1961?"

#. The facts necessary for the present purposes are as noticed by the Tribunal in affirming the order of the CIT(Appeals) the assessments for the two years have been reopened by issuing notice on 30.10.1975. According to reasons recorded by the assessing officer the assessment was reopened on the basis of information which was in the form of law laid down by this Court in CIT v. Navnitlal Sakarlal 125 ITR 67. The CIT (Appeals) has found that as the reopening of the assessment was founded on the basis of information contained in an order and not on the satisfaction of the Income Tax Officer that the escapement of income from assessment is by reason of failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment the case fell within the precincts of Section 147(b) and not under Section 147(a) as it then stood. Under Section 149 Limitation for initiating proceeding under Section 147(b) is only four years from the end of relevant assessment year. The assessment year 1967-68 closes on 31.3.1968 and assessment years 1968-69 closes on 31.3.1969. The four years in respect of reassessment expired on 31.3.192 and 31.3.1973 respectively. The initiation of reopening proceeding on the basis of judgment delivered on 2.7.74 in October 1975 is obviously a case falling under section 147(b) and not under section 147(a) and beyond four years from the end of relevant assessment year in respect of which reopening proceedings were initiated. Thus the initiation of proceedings under Section 147 was held to be barred by time and assessment founded thereon could not be sustained. On merit also, the Tribunal has held in favour of the assessee. Section 147 at the relevant time read:

"147. If -

(a) the Income-tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under section 139 for any assessment year to the Income-tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on

the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,

he may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in sections 148 to 153 referred to as the relevant assessment year).

Explanation 1. - For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

(a) where income chargeable to tax has been under-assessed; or

(b) where such income has been assessed at too low a rate; or

(c) where such income has been made the subject of excessive relief under this Act or under the Indian Income-tax Act, 1922 (XI of 1922); or

(d) where excessive loss or depreciation allowance has been computed.

Explanation 2. - Production before the Income-tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this section"

#. Section 149 lays down the time limit within which notice is to be issued under Section 148 before making the assessment, reassessment or recomputation under Section 147. It provide:

"Section 149. That in cases falling under clause (a) of Section 147 -

(i) for the relevant assessment year, if eight years have elapsed form the end of that year, unless the case falls under subclause (ii); and in cases falling under it no notice shall be issued at any time after expiry of four years from the end of relevant assessment year"

#. Section 148(2) require Income Tax Officer to record his reasons for doing so before issuing notice under that Section.

#. From the scheme of the statute it is apparent that condition precedent for the case to fall under

Section 147(a), the Income Tax Officer must have reason to believe on two counts, firstly, that the income chargeable to tax has escaped assessment for that year and secondly such escapement of income chargeable to tax from assessment is by reason of omission or failure on the part of assessee to make a return or to disclose fully and truly all material facts necessary for assessment for that year and subsection (b) of Section 147 was applicable only where the applicability of clause (a) was excluded and dependent on the formation of belief of the Income Tax Officer that income chargeable to tax has escaped assessment which should be founded as a consequence of information in his possession that is to say the information on the basis of which the belief is entertained must be subsequent to the making of initial assessment. This necessitated that the statutory requirement about recording of reasons must disclose the necessary foundation on the basis of which the income Tax Officer entertains the belief that income of the assessee chargeable to tax has escaped assessment.

#. As a matter of fact the Tribunal has found that reasons recorded by the assessing officer disclosed that Income Tax Officer has entertained belief as to escapement of income chargeable to tax from assessment on account of information received by him in the form of a judgment of this court declaring the state of law, about the includibility of share that is to be received by beneficiary from the estate left by a deceased. It is not the belief as to the escapement of income chargeable to tax from assessment was not entertained by the assessing officer on the ground that there has been failure on the part of the assessee to disclose truly and fully all material facts necessary for the assessment. In view of these findings the answer is apparent that no proceedings could have been initiated under Section 148 beyond the expiry of four years from the end of relevant assessment year. As the case squarely fell under Section 147(b) and not under Section 147(a), we, therefore, are of the opinion that the Tribunal was right in reaching its conclusion that the initiation of reassessment proceedings in the case of assessee for the two assessment years under Section 147(b) was barred by time.

#. It may be further noticed that since the submission of statement of case the decision of the Gujarat High Court in CIT v. Navnitlal Sakarlal 125 ITR 67 has been reversed by the Supreme Court in Navnitlal Sakarlal v CIT 193 ITR 16, which would support the order of Income Tax Appellate Tribunal order on merit as well though for different reasons.

#. In that view of the matter, truly speaking a question about the validity of reassessment prima facie appears to have become academic.

#. Accordingly the questions referred to us are answered in affirmative in favour of the assessee and against the revenue. There shall be no order as to costs.

(Rajesh Balia, J) (A.R.Dave, J)